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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

13 CR 315 (WHP)

5 FREDERIC CILINS,

6 Defendant.

7 -----x

8 December 6, 2013

9  
10 Before:

11 HON. WILLIAM H. PAULEY III,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the  
Southern District of New York

16 BY: ELISHA KOBRE

STEPHEN SPIEGELHALTER

17 Assistant United States Attorneys

18 WILLIAM SCHWARTZ

19 BRUCE LEHR

MICHELLE SMITH

20 ANNIKA GOLDMAN

Attorneys for Defendant

21 FRENCH INTERPRETER: Arlette Weill

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1 (In open court)

2 THE DEPUTY CLERK: United States of America versus  
3 Frederic Cilins. Appearances for the government?

4 MR. KOBRE: Good morning, your Honor. Elisha Kobre  
5 and Steven Spiegelhalter for the government.

6 THE COURT: Good morning.

7 THE DEPUTY CLERK: Appearances for the defendant?

8 MR. SCHWARTZ: Good morning, your Honor. William  
9 Schwartz, and I'm here with my colleague, Annika Goldman from  
10 Cooley, LLP.

11 MR. LEHR: Good morning, your Honor. Bruce Lehr.

12 MS. SMITH: Good morning, your Honor. Michelle Smith  
13 on behalf of Mr. Cilins, who's seated to my right.

14 THE COURT: Good morning to all of you.

15 I note the presence of a French interpreter. Would  
16 you identify yourself for the record.

17 INTERPRETER: Yes, your Honor. My name is Arlette  
18 Weill, W-E-I-L-L.

19 THE COURT: Good morning. Please administer the oath  
20 to the interpreter.

21 (Interpreter sworn)

22 THE COURT: Mr. Cilins, are you able to understand  
23 what's being said here this morning through the French  
24 interpreter?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Very well. Good morning.

2 Mr. Kobre, what is the status of this matter?

3 MR. KOBRE: Your Honor, there was a trial date of  
4 December 2nd, which at the last conference and argument the  
5 Court indicated that it was open to adjourning to allow new  
6 defense counsel to get up to speed on the case and potentially  
7 set a new trial date.

8 And discovery has been produced. There is a pending  
9 motion before the Court, and the government sent the letter to  
10 the Court essentially to get clarity on the adjournment of the  
11 trial date and perhaps to get a sense of what trial dates the  
12 Court might be available for.

13 THE COURT: Mr. Schwartz?

14 MR. SCHWARTZ: I think that Mr. Kobre has fairly  
15 stated the status, your Honor. You'll recall from the last  
16 hearing we were a bit reluctant to agree to a trial date  
17 without knowing your Honor's ruling, because that could affect  
18 many things in this case, particularly how we prepare.

19 THE COURT: I do, and I have been working on a ruling  
20 with respect to that motion. It's my hope that within a few  
21 weeks' time I'm going to be able to complete my work on that  
22 and issue a ruling. And I think that we do need to fix, as  
23 best we can, a firm trial date at this time.

24 And I'm prepared, subject to comments from counsel, to  
25 set the matter down for jury selection and trial, assuming,

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1 Mr. Kobre, that this is a one- to two-week trial -- is that  
2 what we previously indicated?

3 MR. KOBRE: That's correct, your Honor.

4 THE COURT: Mr. Schwartz, do you have any reason to  
5 believe it's going to be something different?

6 MR. SCHWARTZ: That's the same estimate I would have  
7 given the Court.

8 THE COURT: All right. How about March 31 for jury  
9 selection and trial?

10 MR. SCHWARTZ: May I have a moment to talk to my  
11 client, your Honor?

12 THE COURT: Absolutely, you may. (Pause)

13 MR. SCHWARTZ: Your Honor, does the Court have  
14 anything available before then? We're anticipating the ruling  
15 in the next couple of weeks.

16 THE COURT: By that, I mean, you'll likely have a  
17 ruling in early January.

18 MS. SMITH: Excuse us, your Honor. I'm so sorry.  
19 Forgive me, your Honor.

20 THE COURT: That's all right.

21 (Pause)

22 MR. SCHWARTZ: So, your Honor, we had originally  
23 thought that your Honor had asked us to put aside the first  
24 week of February, but if we're not going to have a ruling until  
25 sometime in January, then probably the safer course is to

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1 accept the date your Honor has proposed, unless your Honor has  
2 something later in February or earlier in March.

3 THE COURT: I quite frankly really don't. If you want  
4 to go to trial earlier, I'll transfer the case to another  
5 judge.

6 MR. SCHWARTZ: Your Honor, there's still the issue  
7 with the ruling, so --

8 THE COURT: Well, I'll make the ruling. I put the  
9 work into it. But otherwise, really the earliest that I can do  
10 it is March 31.

11 MR. SCHWARTZ: Your Honor, we will accept the Court's  
12 offer.

13 THE COURT: All right.

14 MR. SCHWARTZ: "The offer" meaning March 31st.

15 THE COURT: March 31.

16 MR. SCHWARTZ: Not the offer to transfer the case.

17 THE COURT: Okay. March 31 for jury selection and  
18 trial.

19 Let's fix a schedule now with respect to 404(b)  
20 material and in limine motions. Does the government anticipate  
21 any 404(b)?

22 MR. KOBRE: I'm not sure yet, your Honor. And I would  
23 ask to be able to provide that to defense counsel no later than  
24 two weeks before trial.

25 MR. SCHWARTZ: Your Honor, I don't mean to interrupt

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1 Mr. Kobre. Are you done?

2 MR. KOBRE: Yes.

3 MR. SCHWARTZ: May I address the Court?

4 THE COURT: Yes.

5 MR. SCHWARTZ: Your Honor, I sent Mr. Kobre and  
6 Mr. Spiegelhalter a letter a couple weeks ago asking to fix,  
7 among other things, that date, 404(b) evidence six weeks before  
8 trial to give us a reasonable amount of time to make a motion  
9 in limine, not in the course of trial preparation. And in  
10 addition, your Honor, there are other things that we would like  
11 the Court to talk to the government about, perhaps set some  
12 deadlines.

13 THE COURT: All right. Before we get to the other  
14 things, I'm in agreement with you, Mr. Schwartz, that the  
15 government should produce 404(b) material well in advance of  
16 trial. Accordingly, I'm going to require the government to  
17 produce any 404(b) material by February 14th so that motions  
18 in limine can be filed by February 24, with opposition by  
19 March 7, reply by March 13. And I will set the matter down for  
20 an oral argument on March 26 at 2:00.

21 Now, what other matters do you want to raise?

22 MR. SCHWARTZ: If I may just come to the podium, your  
23 Honor. It's just a little easier.

24 THE COURT: I'll be able to hear you better.

25 MR. SCHWARTZ: So as your Honor is aware, this case

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1 involves video and audiotapes of a number -- we have received a  
2 number of telephone calls and had several fairly lengthy  
3 meetings between a cooperating witness and our client. Those  
4 tapes are extensive. They are all in French, but it makes it a  
5 little more difficult because the cooperating witness does not  
6 speak a Parisian French that's easy for us to have translations  
7 of and speaks sort of an African Pigeon French. And these are  
8 difficult tapes to manage.

9 We asked the government if they would designate those  
10 portions of the tapes and produce the transcripts of those  
11 portions of the tapes that they intend to introduce six weeks  
12 before trial, which would give us I think sufficient time to be  
13 able to check the translations and make sure that we are  
14 comfortable with them, but more importantly, to be able to make  
15 any cross designations for the Court's consideration and give  
16 the Court time to consider whether those cross designations are  
17 appropriate.

18 And I think now that the case is set for as far out as  
19 it is, six weeks is, in fact, very generous to the government.  
20 I can see it even being eight weeks. There's no reason that  
21 this has to be on the eve of trial where we get the principal  
22 evidence that's going to be used in the case. So that was the  
23 first thing.

24 THE COURT: Before you get to the next thing, let me  
25 hear from the government.

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1 MR. KOBRE: Your Honor, the government intends to  
2 produce the entirety of the translations and transcriptions  
3 that we get. The audio recordings were sent to an audio  
4 enhancement expert to increase the quality of the audio so that  
5 they can be better translated. That was a fairly time  
6 consuming process. And we only recently received those back,  
7 and I've produced those audio enhancements to the defense.

8 We are working as quickly as we can to get the  
9 transcriptions. We do not have them yet. And we're working  
10 with the translators. And as soon as we have them, as soon as  
11 I have them, I will produce them in their draft forms as soon  
12 as I have those, as well as final transcripts. And I expect  
13 that to be substantially before trial. I don't know that it  
14 will be six weeks, but it will be very substantially before  
15 trial.

16 THE COURT: It's going to be six weeks. I'm fixing  
17 the same schedule.

18 MR. KOBRE: Yes, your Honor.

19 THE COURT: There's no reason. It's always good for  
20 the government to look at its evidence well before trial.

21 And if you don't have translations, how on earth do  
22 you know what's in there?

23 MR. KOBRE: Your Honor, there were draft translations  
24 prepared by the FBI, and those have all been produced as well.  
25 So we do know what's in there. But for trial, obviously, we'll



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1 have an expert testify and put those translations into the  
2 record.

3 MR. SCHWARTZ: Your Honor, to be clear, it's not just  
4 the translations. The government has -- I am not complaining.  
5 I want to be clear, I'm not complaining about the government's  
6 production as they've gotten things for us. They have, as far  
7 as I can tell, lived up to their obligations. But just as  
8 important as the translations, six weeks before trial are the  
9 designations, which pieces of which tapes are -- or which  
10 translations are they actually offering.

11 THE COURT: How much in duration are we talking about  
12 on these tapes?

13 MR. SCHWARTZ: We're talking about -- I think there  
14 are three or four meetings of several hours each. I don't  
15 think the government is going to be playing all of them. And  
16 there are many, many, many phone calls. I don't know that the  
17 government, if any, is going to be playing of those. Maybe 12  
18 hours total.

19 THE COURT: At some point the government's got to  
20 decide what it's actually going to play to the jury. At least  
21 can you designate the particular phone calls that you're going  
22 to play, or is it your intention to play all of them?

23 MR. KOBRE: No, your Honor. I think the phone calls  
24 is something that we can designate fairly easily, because,  
25 based on the draft translations that we have, subject to

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1 potentially some tweaking --

2 THE COURT: Always subject to some tweaking, assuming  
3 good faith, right?

4 MR. SCHWARTZ: Your Honor, I'm just -- I'm not going  
5 to stand here and make arguments if they have another few lines  
6 that they want to add. But the meat of the case is in the  
7 meetings, and the meetings are long. And they're hard -- I  
8 can't listen to them because they mean nothing to me. I can  
9 only read. But cross designation here may or may not be  
10 important. I mean, it's important for issues of hearsay. We  
11 may use tapes in different ways, but it would be very important  
12 for us to prepare our case. This is the government's evidence  
13 to know what it is they're offering from the meetings.

14 MR. KOBRE: Your Honor, as soon as we have the  
15 transcriptions back, we will -- and based also in part on what  
16 your Honor's ruling is, we'll designate those areas and I will  
17 convey them to Mr. Schwartz. I will not delay in doing that.

18 THE COURT: And in any event, so that Mr. Schwartz has  
19 the benefit of the designations, six weeks before trial so that  
20 he can frame any motions in limine.

21 MR. KOBRE: Yes, your Honor.

22 THE COURT: And cross designations.

23 MR. KOBRE: Yes, your Honor.

24 THE COURT: What else?

25 MR. SCHWARTZ: Your Honor, the next one is something

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1 that I think your Honor traditionally hears but it's important  
2 in this case, as it is in every other case. We've asked the  
3 government as well to produce the 3500 material six weeks  
4 before trial. I don't think they have very many witnesses. I  
5 don't think this is complicated. It would give us a chance to  
6 really prepare. And so I would ask the Court inquire to the  
7 government as to that.

8 MR. KOBRE: Your Honor, I think that that's very  
9 premature. In my letter response to Mr. Schwartz I said that  
10 the government would produce the 3500 a reasonable time before  
11 trial. We're not talking here about producing it the Friday  
12 before trial. We are going to produce it substantially before  
13 trial. And I haven't even had a chance to talk with  
14 Mr. Schwartz yet. And we will work out between the parties a  
15 schedule that's appropriate. And if not, Mr. Schwartz can  
16 certainly approach the Court, but six weeks before trial is  
17 excessive. And there are --

18 THE COURT: What do you anticipate the volume of the  
19 3500 material to be?

20 MR. KOBRE: It's hard even to know at this point.  
21 It's not going to be -- we do not see this -- we don't have  
22 many witnesses, so we don't think it's going to be a very  
23 substantial amount of 3500 material. But we want to provide  
24 the right 3500 material at the appropriate time. And I will  
25 work with Mr. Schwartz on that.

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1 THE COURT: Mr. Schwartz, I think that asking for the  
2 3500 material six weeks in advance is a bridge too far. My  
3 sense in a case like this, because you're dealing with foreign  
4 witnesses, foreign language and a host of other issues, I think  
5 the government should produce it two weeks before trial. And  
6 obviously there will be 3500 material that will arise after  
7 that, but the material that the government can produce should  
8 be produced two weeks before trial.

9 MR. SCHWARTZ: Your Honor, can I ask that we get at  
10 least at some period before that two weeks a good faith witness  
11 list of the witnesses the government intends to call in its  
12 case in chief?

13 MR. KOBRE: Your Honor, the government would oppose  
14 that. As your Honor knows, the law is pretty clear that unless  
15 there's some particularized showing of need, a witness list  
16 long before trial is not appropriate. We'll produce a witness  
17 list together with the 3500, or the 3500 -- if there are  
18 witnesses that don't have 3500, we'll notify defense about  
19 that.

20 I should just mention for your Honor also, there are  
21 witness security issues in this case. And I can go into detail  
22 in that, if the Court would like. But I think two weeks before  
23 trial would be appropriate.

24 THE COURT: What are the witness security issues?

25 MR. KOBRE: Well, your Honor, this case arose out of

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1 an attempt to obstruct an investigation that is still ongoing.  
2 The defendant was not the only person who was involved in that  
3 obstruction. The evidence in this case shows that there were  
4 other individuals as well. And we are concerned that there are  
5 witnesses out there that may be approached improperly or  
6 influenced improperly. And so I think that is just another  
7 reason why two weeks, two weeks before trial really is  
8 sufficient.

9 MR. SCHWARTZ: My client has been under arrest in this  
10 case, your Honor, and incarcerated since April. It is hard for  
11 me to believe -- if the government has any evidence of  
12 tampering by anybody since April, then they should let the  
13 Court know that. If there has not been, then this is just a  
14 red herring that's on the table. There are a lot of people all  
15 over the world who know my client is under arrest, who know  
16 there are obstruction charges and have some sense of who some  
17 of the witnesses are. I don't think there's been any evidence  
18 of tampering, and I don't see any reason we can't get a witness  
19 list.

20 THE COURT: Look, on the question of a witness list, I  
21 will take a further letter submission from the parties about it  
22 and I'll fix a time after I hear the government's concern  
23 articulated more fully.

24 MR. SCHWARTZ: Finally, your Honor, and this is the  
25 government is required to produce to us their exhibits. And we

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1 would ask that we get a substantial time before trial -- and  
2 not with the 3500 material, because it's very hard to get all  
3 of this stuff two weeks and then try to absorb it -- a list of  
4 the exhibits it intends to offer in its case in chief. I would  
5 ask your Honor, we asked them for six weeks. I'm prepared to  
6 take it a month before trial.

7 MR. KOBRE: Again, your Honor, this is not a complex  
8 case. And there's just no reason -- the exhibit list is not  
9 going to be extensive. I'm happy to discuss with  
10 Mr. Schwartz --

11 THE COURT: So it sounds like it would be easy, then,  
12 for the government to provide -- you could provide the exhibit  
13 list now, if it's not extensive and it's all straightforward.

14 MR. KOBRE: It's not a matter -- your Honor, what I  
15 mean to say is --

16 THE COURT: It's about surprise. That's all defense  
17 counsel is concerned about.

18 Produce your exhibit list four weeks in advance, all  
19 right? And certainly in the preparation running up to trial,  
20 if something else comes up, it's subject to supplementing. But  
21 give them your list of exhibits four weeks in advance.

22 MR. KOBRE: Yes, sir.

23 MR. SCHWARTZ: Your Honor, I've never had a case where  
24 the government has not supplemented its exhibit list and --

25 THE COURT: Nor I.

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1 MR. SCHWARTZ: -- has not done it in good faith.

2 THE COURT: My experience is the same.

3 Anything else?

4 MR. SCHWARTZ: No, your Honor. Depending on the  
5 Court's ruling, we may be coming back to talk about experts.  
6 But I think for the moment that's my agenda.

7 THE COURT: Anything further from the government?

8 MR. KOBRE: Just two small matters. One is with  
9 respect to pretrial motions, just motions to suppress and  
10 things of that nature, I don't know that that's ever been  
11 addressed at this point.

12 THE COURT: Are there any other pretrial motions that  
13 the defendant wishes to make at this time, motions to suppress  
14 or the like?

15 MR. SCHWARTZ: Your Honor, I don't believe that there  
16 are. But if there are, I'll call Mr. Kobre. I will inform him  
17 of that, and we will discuss the schedule.

18 THE COURT: All right. You'll submit a letter to the  
19 Court?

20 MR. SCHWARTZ: Yes.

21 THE COURT: And can you come to a decision on that in  
22 the next two weeks?

23 MR. SCHWARTZ: With the exception of the matters that  
24 are under --

25 THE COURT: That might flow from my decision.

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1 MR. SCHWARTZ: Then the answer is for sure.

2 THE COURT: Okay. What is the defendant's view  
3 concerning the exclusion of time between now and March 31?

4 MR. SCHWARTZ: The defendant will not object, your  
5 Honor.

6 THE COURT: Since this continuance is due to the  
7 Court's need to resolve certain motions that are before it and  
8 to allow sufficient time for counsel to adequately prepare for  
9 the trial of this case, I prospectively exclude the time from  
10 today until March 31, 2014, from Speedy Trial Act calculations.  
11 I find that this continuance serves to ensure the effective  
12 assistance of counsel and prevents any miscarriage of justice.  
13 Additionally, I find that the ends of justice served by such a  
14 continuance outweigh the best interests of the public and  
15 Mr. Cilins in a speedy trial pursuant to 18, U.S.C.,  
16 Section 3161.

17 I would urge the parties to get any letter submission  
18 to me on the issue of the witness list by January 10. Just  
19 submit something to me, all right, and I'll resolve it.

20 Anything further?

21 MR. KOBRE: No. Thank you, your Honor.

22 MR. SCHWARTZ: No, your Honor.

23 THE COURT: Thank you for coming in. Have a good  
24 holiday.

25 (Adjourned)